Calendar No. 417

101ST CONGRESS *1st Session*	SENATE	REPORT 101-224

REVIEW OF PROPOSED RAIL ACQUISITIONS

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1005

NOVEMBER 21 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

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REVIEW OF PROPOSED RAIL ACQUISITIONS

NOVEMBER 21 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1005]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1005) relating to the sale, purchase, or other acquisition of certain railroads, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF BILL

The bill, as reported, would give the Interstate Commerce Commission (ICC) jurisdiction to review the acquisition of control of a class I rail carrier by a person or entity that does not own or operate another carrier (a "non-carrier").

BACKGROUND AND NEEDS

Currently, the ICC has jurisdiction to review the acquisition of any rail carrier, regardless of size, by another carrier or person or entity with carrier interests. There is, however, no clear jurisdiction for the ICC to review and approve a non-carrier acquisition of a rail carrier even in the case of large class I carriers.

Over the past several months, there has been considerable discussion and some activity in the investment community related to leveraged buyouts of rail carriers. While this bill is not aimed at preventing leveraged buyouts or any other type of acquisition of a

class I carrier by non-carrier interests, the Committee recognizes that these transactions contain risks. The strain of meeting enormous debt burdens may force companies to abandon service, lay off employees, or defer essential maintenance at the risk to public safety. Furthermore, in response to the specter of an unwelcome suitor, many of the Nation's class I carriers have sought to boost lagging stock prices by adding additional debt in order either to pay special dividends or to repurchase outstanding shares. At present, a majority of the Nation's sixteen class I carriers have substantially increased their debt to equity ratio. In an industry that is particularly vulnerable during an economic downturn, any additional increase in debt levels may have a serious impact upon the continued viability of a debt-laden carrier. On the other hand, some leveraged buyouts may have the positive effect of energizing ossified companies, refocusing their management, and forcing them to operate in a more efficient manner.

The Committee believes that the purchase of a class I carrier by a non-carrier would be a transaction of significance to the public. Because only 16 class I carriers are currently in operation, if the financial resources of the entity that is acquiring control of any one of these carriers are insufficient or if there is an inadequate commitment to maintenance of the line being acquired, it could affect the stability of the Nation's rail network.

Of particular concern to the Committee are transactions which involve the issuance of large amounts of new debt without substantial likelihood of repayment. At the time of the Committee's markup of the reported bill, the Federal Government held nearly $300 million of unsecured debt as a result of financial assistance provided to various railroads in the past two decades. The addition of significant amounts of acquisition debt, senior to the debt owed to the Federal Government, quite possibly could decrease the value of the debt owed to the Federal Government, reduce its marketability, and have serious budgetary implications. Additionally, the underlying purpose for such Federal assistance—to ensure the continuation of rail service in the public interest—could be undermined by the imposition of significant amounts of new debt without proper assurances of continued investment in and maintenance of the rail system subject to acquisition.

The lack of clear jurisdiction for ICC review of non-carrier rail acquisitions was brought to the forefront by the recent attempt made by Japonica Partners (Japonica), a non-carrier, to purchase the Chicago and North Western Railroad (CNW). The initial Japonica offer would have added $650 million in new debt to the CNW, resulting in an annual debt service in excess of $100 million. It was unclear whether this offer included any commitments for continued investment in the railroad by Japonica.

Concerned about the effects that this highly leveraged transaction would have had upon essential rail service in their respective States, Senators Exon, Kasten, Harkin, and Grassley requested that the ICC institute a proceeding to examine the Japonica proposal. In responding to the members of the Senate who had requested the examination of the Japonica transaction (prior to its subsequent termination), the ICC noted that its jurisdiction to evaluate rail acquisitions by non-carriers was unclear. Three of the

five ICC Commissioners, however, indicated in separate statements that they would have required Japonica to apply for authority to execute the buyout, although there was no overall consensus as to the statutory basis for the ICC's exercise of jurisdiction. S. 1005 would close this loophole in the ICC's jurisdiction and grant to it clear jurisdiction to review offers by non-carriers to purchase any class I rail carrier.

Although not a class I carrier, the recent bankruptcy of the Chicago Missouri and Western Railroad (CMW) is illustrative of the consequences resulting from a leveraged buyout that fails to live up to the expectations of the financial advisers. The CMW was purchased in 1987 by an investment group, Venango River Corp. (Venango), which is alleged to have provided a mere $55,000 of a purchase price that exceeded $86 million. Unable to meet the extraordinary debt burdens, Venango was forced to seek protection from its creditors and reorganize under chapter XI of the Bankruptcy Code of the United States.

Subsequent to filing under chapter XI of the Bankruptcy Code, the trustee appointed in the matter brought suit against the two financial managers involved in the transaction. CitiCorp and Heller Financial Corp. (Heller) had provided both the $80 million purchase price and an additional $20 million in start up financing. The trustee alleged that CitiCorp and Heller were aware at the time the loan was made that Venango was insolvent.

As a consequence of the demise of CMW, essential rail service to the midwestern States was jeopardized, and resulting from CMW's inability to meet its debt burdens, over 90 employees have been laid off. The carrier's North-South line has been sold for a total consideration of $36 million. The Atchison, Topeka, and Santa Fe Railroad (Santa Fe) has made an offer of $24 million to the bankruptcy trustee for the East-West line. In addition, approximately $31.5 million of the original purchase price was returned by the company that sold the lines to CMW to settle litigation with CMW. Moreover, the ICC has ordered the Santa Fe to begin directed rail service over the part of the East-West CMW line covered by their purchase application, without cost to the Federal Government. In other cases, however, directed service may include a commitment of Federal resources to preserve service if a carrier cannot be found to assume this obligation without subsidy.

While it may be overreaching to provide the ICC with jurisdiction to review all non-carrier acquisitions, the Committee believes that in order to avoid future collapses such as the CMW—which would be magnified enormously in the case of a class I carrier—it is essential that the ICC at least review proposed acquisitions of class I carriers.

Legislative History

On May 16, 1989, S. 1005 was introduced by Senator Harkin. The legislation was co-sponsored by Senators Pressler, Simon, Grassley and Daschle. The Surface Transportation Subcommittee held a hearing on S. 1005 on June 22, 1989. At the Committee's executive session on October 5, 1989, Senator Exon, the chairman of the Surface Transportation Subcommittee, offered an amendment in the

nature of a substitute to the original text of S. 1005. This substitute was approved by a vote of 12 to 8.

Legislation on this subject was also reported by the House Energy and Commerce Committee as an amendment to H.R. 2364, an Amtrak authorization measure. The Amtrak authorization, including its provisions giving the ICC jurisdiction over an acquisition of a controlling interest in a class I rail carrier by a non-carrier, was approved by the full House on September 25, 1989, and referred to the Committee. The substitute legislation ordered reported by the Committee is substantially similar to the provisions in the House-passed legislation relating to ICC jurisdiction over such transactions.

While the purpose of the Committee's legislation is similar to the original text of S. 1005, the reported measure differs from the original version of S. 1005 in that it amends a different section of title 49, United States Code, lists more specific criteria for review (adequacy of transportation, resulting fixed charges, and interest of carrier employees) and sets a maximum time limit for review of these proposed transactions (generally 105 days in total).

Summary of Major Provisions

As reported, S. 1005 would provide for the following:

1. The ICC is given jurisdiction to review the acquisition of direct or indirect control of a class I rail carrier by a non-carrier (a person or entity that does not own or operate or control another carrier).

2. The ICC would begin a proceeding to authorize a non-carrier acquisition of a class I carrier upon application, which triggers notice to the carrier that is the target of the acquisition, as well as notice to each State in which the carrier is located.

3. In a proceeding authorized under this bill, the ICC is to consider:

   (a) the effect of the proposed transaction on the adequacy of the transportation to the public;

   (b) the total fixed charges (interest charges) that result from the proposed transaction; and

   (c) the interest of carrier employees affected by the proposed transaction.

4. The ICC shall approve a non-carrier acquisition when it finds the transaction is consistent with the public interest. The ICC may impose conditions governing the transaction, including the subordination of any new debt to pre-existing debt owed the United States, such as Federal Railroad Administration loans for which there is a repayment obligation. Transactions which contemplate a guarantee or assumption of payment of dividends or fixed charges, or which will result in an increase of total fixed charges, may be approved only when the ICC finds that the guarantee, assumption, or increase is consistent with the public interest.

5. Notice of an application would be published in the Federal Register within 15 days of filing. Comments thereafter would be received, with an opportunity for the Secretary of Transportation to intervene as a party to the proceeding. Evidentiary proceedings

would be concluded and a final decision issued by the ICC within 90 days after the publication of notice.

6. The ICC would not be precluded from approving more than one application for control. The carrier and its shareholders would continue to approve proposed acquisitions from any one of a group of competing applications receiving ICC authority.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 13, 1989.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1005, a bill relating to the sale, purchase, or other acquisition of certain railroads, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, October 5, 1989.

S. 1005 would require the approval and authorization of the Interstate Commerce Commission (ICC) for the acquisition of a class I rail carrier by a non-rail purchaser. There are likely to be few acquisitions covered by this provision, probably no more than one or two in most years. Based on information provided by the ICC, we estimate that the commission would incur costs of about $150,000 for each case. It is unlikely that this would affect the ICC's total spending.

The bill would involve no costs for state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marjorie Miller, who can be reached at 226-2860.

Sincerely,

Robert D. Reischauer,
Director.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill as reported will have no effect on the number of individuals regulated or on the personal privacy of such individuals, although it does alter the point in time at which individuals or entities become subject to ICC jurisdiction. Furthermore, it is not expected to have any significant economic impact or increase paperwork burdens.

Currently, there are only 16 class I carriers operating in the United States. Under its existing authority pursuant to section 11343 of title 49 of the U.S. Code, the ICC must undertake a detailed review of railroad mergers, consolidations, and other transac-

tions which contemplate change of control. However, unlike the transactions covered under current section 11343 of title 49, the issues of market concentration and overall industry competitiveness do not apply to and therefore do not require an extensive review as part of the transactions to be covered under the authority granted in the reported bill. This bill therefore provides for a limited 90-day review by the ICC following publication in the Federal Register.

To the Committee's knowledge, there only have been two transfers of control of a class I carrier to non-carrier interests within the past five years. With this fact in mind in conjunction with the fact that there are only sixteen class I carriers now in operation, the Committee concludes that this legislation would result in a minimal amount of new regulation. The ICC would not be required to hire new staff or, since the possible number of transactions involved is so limited, this legislation would not involve substantial increases in the burden of paperwork.

Finally, the legislation contains adequate safeguards which provide for an expedited review of a transaction covered by the reported bill. The bill specifically provides that the ICC must complete its review of the transaction within 90 days after its publication in the Federal Register. Therefore, the proposed transactions will not languish interminably at the ICC.

Section-by-Section Analysis

SECTION 1

Section 1 of the reported bill would amend section 11348 of title 49, United States Code, which concerns ICC authority over non-carriers that acquire control of a carrier. It would redesignate subsections (a) and (b) of section 11348 as (b) and (c) and insert a new subsection (a). New subsection (a)(1) would require that acquisition of direct or indirect control of a class I rail carrier by a person that is not a carrier and, directly or indirectly, does not control, and is not controlled by, a carrier may be carried out only with the approval and authorization of the ICC. The Committee believes that this is a proper extension of the ICC's existing authority to evaluate the acquisition of a carrier by another carrier or entity with carrier interests.

The Committee intends that the reported bill provide the ICC with jurisdiction to review and approve the acquisition of control of class I rail carriers, or of an entity in control of a class I carrier, by non-carriers that do not control and are not controlled by other carriers. The bill is specifically intended to focus on the acquisition of class I rail carriers by unconnected non-carriers. The Committee does not intend for the bill to affect corporate restructuring by existing railroads or existing rail holding companies that may be accomplished through the creation of a new entity that prior to a transfer may not technically be a carrier, if the creation of such a new entity is not an artifice for transferring control to a non-carrier without the review otherwise required by this legislation. It also is not intended to apply to corporate restructurings that do not involve a purchase, sale, or exchange of stock or assets unless intended to facilitate the acquisition of a class I rail carrier by an uncon-

nected non-carrier, or unless intended to change the locus of control of a rail carrier among shareholders within a corporate family, in contravention of the intent of this legislation.

New subsection (a)(2) would provide that the ICC shall begin a proceeding to approve and authorize such a transaction on application of the person seeking that authority. When an application is filed with the ICC, the ICC shall notify the chief executive officer of each State in which the property of the carrier involved in the proposed transaction is located, and shall notify the carrier that the non-carrier is proposing to acquire.

New subsection (a)(3) would provide that in a proceeding under this subsection, the ICC shall consider the effect of the proposed transaction on the adequacy of transportation to the public, the total fixed charges (interest charges) that result from the proposed transaction, and the interest of carrier employees affected by the proposed transaction. In balancing these interests, the ICC shall give particular attention to the likelihood of success of the proposed transaction and commitments to maintenance and preservation of essential rail service.

Under new subsection (a)(4), the ICC would approve and authorize a transaction when it finds the transaction is consistent with the public interest. In addition, the ICC may impose conditions governing the transaction, including restrictions and conditions on abandonments, conditions on dividend payments, and the subordination of any new debt created to any preexisting debt owed to the United States, sufficient to provide reasonable protection to the United States. When the transaction contemplates a guarantee or assumption by a carrier of the payment of dividends or of fixed charges, or will result in an increase of total fixed charges, the ICC may approve and authorize the transaction only if it finds that the guarantee, assumption, or increase is consistent with the public interest.

The Committee does not intend to supplant the judgment of the marketplace with that of the Commissioners of the ICC. However, the Committee recognizes that these transactions can be fraught with risks that may have deleterious effects upon the Nation's rail service. Therefore, we believe that some ICC review is necessary to ensure the continued viability of these class I carriers.

Additionally, the Committee wishes to point out in this time of severe budgetary constraints that the Government has made a substantial investment in our Nation's railroads. At the time of the Committee's markup of the reported bill, the rail industry owed the Federal Government nearly $300 million in outstanding loans under the section 505 program of the Railroad Revitalization and Regulatory Reform Act of 1976. (The CNW subsequently repurchased all of its outstanding section 505 shares and notes in the principal amount of $158.4 million.) A non-carrier purchase of a class I railroad facilitated by the issuance of new debt could conceivably jeopardize this substantial investment under the section 505 program. The Committee is particularly concerned with the consequences that could result should the Government's debt be subordinated by this new debt.

The Government also has guaranteed an additional $100 million in loans under the section 511 railroad loan guarantee program of

the Railroad Revitalization and Regulatory Reform Act of 1976. In this regard, recently the Delaware and Hudson Railroad Company (D&H), which was the recipient of over $75 million in Federal loan guarantees, filed for bankruptcy. In addition, since filing its petition, the D&H has not made any payments on its section 505 loan and is currently in default. The Federal Government's investment of over $7 billion in the creation and operation of Conrail, as well as statutory conditions imposed on its operations following privatization, provide yet another example of the public interest in the preservation and continuation of rail service. The Committee believes that the Federal Government's investments must be protected.

The Committee believes that those who accept the assistance of the Federal Government in the form of subsidies and loan guarantees in good conscience cannot object when the ICC conducts a limited review that is designed to protect the public interest and the Federal Government's significant investment.

New subsection (a)(5) would provide for publication of notice of an application in the Federal Register within 15 days of its filing, with a certified copy being furnished to the Secretary of Transportation. If the application is incomplete, the ICC shall reject it by the end of the 15-day period, which order of rejection shall be considered final under section 10327 of title 49, United States Code. The published notice shall indicate that the application involves the acquisition of control of a class I rail carrier and specify the time for issuance of a final decision.

New subsection (a)(6) would establish procedures with respect to applications filed under this legislation. Written comments may be filed with the ICC within 20 days after notice of the application is published. Copies of such comments shall be served on the Secretary of Transportation, who may decide to intervene as a party to the proceeding. A decision to intervene by the Secretary must be made by the 15th day after the date of receipt of the written comments, and if the Secretary decides to intervene, preliminary comments must be sent to the ICC by the 15th day after the date of receipt of the written comments. Overall, the ICC must conclude evidentiary proceedings by the 75th day after the date of publication of the original Federal Register notice, and the ICC must issue a final decision by the 15th day after the conclusion of these proceedings.

To the maximum extent practicable, the ICC shall provide parties to the proceeding with reasonable access to evidence and documents in the proceeding, except to the extent that protective orders may be necessary for specific items of a confidential nature, including those which, if made public, could disclose specific contract rates, confidential contracts, individual shipper movements, or related information.

New subsection (a)(7) would provide that a final decision of the ICC under this legislation is a final action under section 10327 of title 49, United States Code. Also, if the ICC does not issue a final decision within the time limits provided, it must send a written notice to Congress that a decision was not issued and the reasons why it was not issued, followed thereafter with weekly reports to Congress on the steps taken toward the issuance of a final decision.

New subsection (a)(8) provides that the ICC is not precluded from approving more than one application filed with respect to the acquisition of control of a carrier.

New subsection (a)(9) clarifies that the term "control" does not refer to the use of a voting trust in a proceeding for consolidation, merger, or acquisition of control under section 11343 of title 49, United States Code.

SECTION 2

This section gives the ICC 30 days from the bill's enactment to issue interim regulations implementing the provisions of the reported bill, which interim regulations shall take effect notwithstanding the provisions of section 553 of title 5, United States Code. Final implementing regulations shall be issued and in force not later than 180 days after enactment, with notice and an opportunity for public comment.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 1005:

At the close of debate on S. 1005, Senator Kasten requested a rollcall vote on the bill as amended. On a rollcall vote of 12 yeas and 8 nays as follows, the bill was ordered reported:

YEAS—12	NAYS—8
Mr. Hollings	Mr. Danforth
Mr. Inouye	Mr. Packwood
Mr. Ford	Mr. Stevens [1]
Mr. Exon	Mr. Kasten
Mr. Gore	Mr. McCain [1]
Mr. Rockefeller [1]	Mr. Burns
Mr. Bentsen [1]	Mr. Gorton [1]
Mr. Kerry [1]	Mr. Lott [1]
Mr. Breaux	
Mr. Bryan [1]	
Mr. Robb	
Mr. Pressler [1]	

[1] By proxy.

MINORITY VIEWS OF MR. KASTEN

On October 5, 1989, the Senate Commerce Committee favorably reported S. 1005, with an amendment in the nature of a substitute. I am opposed to passage of this legislation. I would note that seven other members of the Committee voted against the bill. Also, the administration is opposed to S. 1005. My opposition is based on concerns about the direct effect of this bill on the railroad industry, and a general philosophical problem I have with increasing governmental regulation of this industry.

The railroad industry is capital intensive. Therefore, railroads need to have the flexibility to acquire capital on favorable terms. The ability to acquire debt is critical to the railroads, because debt financing is, in many instances, cheaper than equity financing. If railroads are not free to go into the capital markets to acquire debt, they will be forced to pay more to meet their capital needs. Moreover, railroads have historically had very low debt loads. In fact, the railroad industry had the lowest debt load of any of the 38 industries surveyed by the ICC in 1988. Given this fact, the railroads may be able to prudently acquire a higher level of debt.

S. 1005 creates a potential 100 day delay caused by ICC review of debt levels incurred as the result of a leveraged buy-out (LBO). Whether the railroads choose to pursue debt or equity financing, this will increase the cost of that financing. Moreover, this ICC review can result in expensive labor protection conditions, under which terminated workers could receive up to six years' full salary. This possibility serves as a disincentive for railroad stock purchasers, putting downward pressure on the stock prices, and increasing the railroads' cost of raising capital.

In addition to these problems, the ICC does not have the appropriate expertise to determine what level of debt a railroad may take on without compromising its financial integrity. Appropriate debt levels are best left to the market place to determine. An entity whose livelihood rests on determining the acceptable use of leverage has greater expertise and incentive than the ICC to determine what that level should be.

In reviewing this legislation, we must understand that the call for ICC review of appropriate debt levels for railroads is simply a means to an end. The ultimate goal of S. 1005 is to assure that rail service is not curtailed as the result of an LBO. With this in mind, it is important to note that the ICC already has sufficient authority to deal with the effects of leveraged and non-leveraged railroad buy-outs. Specifically, the ICC has extensive regulatory authority to review line sales and abandonments. In addition, on October 4, 1989, the ICC issued a decision concerning the Blackstone Capital Partners' acquisition of the Chicago and North Western Railroad, which reasserted the Commission's authority to allow or prevent issuance of securities by a carrier when acquired by a non-carrier.

Finally, this bill runs contrary to the basic deregulatory philosophy of the Staggers Act, which revived the railroad industry in the early 1980s. Now that deregulation has created a healthy environment for the railroad industry, we should not allow ourselves to reverse that trend by reregulating.

Thus, if our goal is to protect rail service, the ICC should not be granted the additional power of reviewing potential debt levels. The Commission already has sufficient authority to help assure maintenance of rail service. This bill may compromise such service by creating uncertainties about ICC approval of a particular financing arrangement and possible imposition of labor protection. This uncertainty will drive up the railroads' cost of capital, which ultimately jeopardizes their financial stability.

ROBERT W. KASTEN, Jr.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

SECTION 11348 OF THAT TITLE

§ 11348. Interstate Commerce Commission authority over noncarrier that acquires control of carrier

(a)(1) Acquisition of control of a Class I rail carrier by a person that is not a carrier and, through direct or or indirect ownership, does not control, and is not controlled by, a carrier may be carried out only with the approval and authorization of the Commission.

(2) The Commission may begin a proceeding to approve and authorize a transaction referred to in paragraph (1) on application of the person seeking that authority. When an application is filed with the Commission, the Commission shall notify the chief executive officer of each State in which property of the carrier involved in the proposed transaction is located, and shall notify that carrier.

(3) In a proceeding under this subsection, the Commission shall consider the following:

(A) The effect of the proposed transaction on the adequacy of transportation to the public.

(B) The total fixed charges that result from the proposed transaction.

(C) The interest of carrier employees affected by the proposed transaction.

(4) The Commission shall approve and authorize a transaction under this subsection when it finds the transaction is consistent with the public interest. The Commission may impose conditions governing the transaction, including the subordination of all or any portion of any new debt created as part of the proposed transaction to any preexisting debt owed to the United States sufficient to provide reasonable protection to the United States. When the transaction contemplates a guarantee or assumption, by a carrier, of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Commission may approve and authorize the transaction only if it finds that the guarantee, assumption, or increase is consistent with the public interest.

(5) The Commission shall publish notice of an application under this subsection in the Federal Register by the 15th day after the application is filed with the Commission and after a certified copy of

it is furnished to the Secretary of Transportation. However, if the application is incomplete, the Commission shall reject it by the end of that period. The order of rejection is a final action of the Commission under section 10327 of this title. The published notice shall indicate that the application involves the acquisition of control of a class I rail carrier, to be decided within the time limits specified in paragraph (6).

(6) Commission procedures with respect to an application filed under this subsection shall be as follows:

(A) Written comments about an application may be filed with the Commission within 20 days after notice of the application is published under paragraph (5). Copies of such comments shall be served on the Secretary of Transportation, who may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Commission by the 15th day after the date of receipt of the written comments.

(B) The Commission must conclude evidentiary proceedings by the 75th day after the date of publication of notice under paragraph (5). The Commission must issue a final decision by the 15th day after the date on which it concludes the evidentiary proceedings.

(7) The final decision of the Commission under paragraph (6)(B) is a final action of the Commission under section 10327 of this title. If the Commission does not issue a final decision within the time limits provided under this subsection, it shall send a written notice to Congress that a decision was not issued and the reasons why it was not issued, and shall thereafter on a weekly basis report to Congress on the steps that have been taken toward the issuance of such final decision.

(8) Nothing in this subsection shall preclude the Commission from approving more than one application filed under this subsection with respect to the acquisition of control of the same rail carrier.

(9) In this subsection, the term "control" does not refer to use of a voting trust in a proceeding subject to section 11343 of this title.

[(a)**]** *(b)* When the Interstate Commerce Commission approves and authorizes a transaction under sections 11344 and 11345 of this title in which a person not a carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title acquires control of at least one carrier subject to the jurisdiction of the Commission, the person is subject, as a carrier, to the following provisions of this title that apply to the carrier being acquired by that person, to the extent specified by the Commission: section 504(f), 10764, subchapter III of chapter 111, and sections 11301, 11709, 11901(f), *(l)*(1), 11909(a)(1), (b), and 11911(a).

[(b)**]** *(c)* When a person subject to sections 11301, 11322, 11709, and 11911 of this title because of acquiring control of a carrier, applies to the Commission for authority to issue securities or assume obligations of liabilities under those sections, the Commission may authorize the issue or assumption only when it finds the issue or assumption—

(1) is consistent with the proper performance of public transportation by the carrier that is controlled by that person;

(2) will not impair the ability of the carrier to provide public transportation; and

(3) is consistent with the public interest in other respects.

○